



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF T-M-A-

DATE: APR. 25, 2016

APPEAL OF NATIONAL BENEFITS CENTER DECISION

PETITION: FORM I-600, PETITION TO CLASSIFY ORPHAN AS AN IMMEDIATE
RELATIVE

The Petitioner, a U.S. citizen, seeks to classify an orphan as an immediate relative. *See* Immigration and Nationality Act (the Act) section 101(b)(1)(F)(i), 8 U.S.C. § 1101(b)(1)(F)(i). An orphan from a country that is not a party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, who is under the age of 16 at the time of filing and adopted abroad by an eligible U.S. citizen, or coming to the United States for such an adoption, may be classified as an immediate relative.

The Director, National Benefits Center, denied the petition. The Director concluded that the Petitioner did not provide evidence of her petition being grandfathered under the Intercountry Adoption Universal Accreditation Act of 2012 (UAA); did not submit a home study meeting the requirements of 8 C.F.R. § 204.311; did not submit evidence of having engaged a primary provider; did not submit evidence that the Beneficiary is an orphan; and did not provide sufficient evidence that the Beneficiary's mother is incapable of providing for the Beneficiary's needs.

The matter is now before us on appeal. With the appeal, the Petitioner submits additional evidence and claims that her counsel has been certified as a primary provider and she has a home study from an accredited agency. She also asserts that the Beneficiary's father does not have any legal rights over the Beneficiary, the Beneficiary's mother is not capable of providing care for her, and the definition of orphan is met.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner is seeking to classify an orphan as an immediate relative. Section 101(b)(1)(F)(i) of the Act provides, in pertinent part:

[A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is

incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That the Attorney General [Secretary of Homeland Security] is satisfied that proper care will be furnished the child if admitted to the United States

The Director concluded that the Petitioner did not provide evidence that her petition was grandfathered under the UAA.¹ The UAA, which became effective on July 14, 2014, requires that all agencies or persons providing adoption services on behalf of prospective adoptive parents in support of Form I-600A, Application for Advance Processing of an Orphan Petition, or Form I-600, Petition to Classify Orphan as an Immediate Relative, be accredited or approved, or be a supervised or exempted provider, in accordance with the Intercountry Adoption Act of 2000 and the Department of State accreditation regulations at 22 CFR Part 96 that apply to cases adjudicated under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

22 C.F.R. § 96.2 states, in part:

Adoption service means any one of the following six services:

- (1) Identifying a child for adoption and arranging an adoption;
- (2) Securing the necessary consent to termination of parental rights and to adoption;
- (3) Performing a background study on a child or a home study on a prospective adoptive parent(s), and reporting on such a study;
- (4) Making non-judicial determinations of the best interests of a child and the appropriateness of an adoptive placement for the child;

¹ Grandfathering is permitted if prospective adoptive parents, before July 13, 2013, either filed Forms I-600 or I-600A, submitted an application to the relevant competent authority (that need not designate a specific child), or accepted a match proposed by a competent authority or appropriate entity. See USCIS Policy Memorandum PM-602-0103, *Guidance on the Implementation of the Intercountry Adoption Universal Accreditation Act of 2012 and the Consolidated Appropriations Act, 2014 in Intercountry Adoption Adjudications* (June 30, 2014), https://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/PM-602-0103-Implementation_of_UAA.pdf.

- (5) Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; or
- (6) When necessary because of a disruption before final adoption, assuming custody and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.

....

Primary provider means the accredited agency or approved person that is identified pursuant to § 96.14 as responsible for ensuring that all six adoption services are provided and for supervising and being responsible for supervised providers where used.

22 C.F.R. §96.14 states, in part:

- (a) Accreditation and approval under this part require that, in each intercountry adoption case, an accredited agency or an approved person will be identified and act as the primary provider. If one accredited agency or approved person is providing all adoption services by itself, it must act as the primary provider. If just one accredited agency or approved person is involved in providing adoption services, the sole accredited agency or approved person must act as the primary provider. If adoption services in the intercountry adoption case are being provided by more than one accredited agency or approved person, the agency or person that has child placement responsibility . . . must act as the primary provider throughout the case:

8 C.F.R. §204.311(c), addressing home study requirements, states that the home study must

....

- (8) Summarize the pre-placement preparation and training already provided to the applicant . . ., the plans for future preparation and training with respect to those issues, or with respect to a particular child . . ., and the plans for post-placement monitoring . . . in the event that the child will be adopted in the United States rather than abroad.

....

- (h) *Financial considerations.* (1) Assessment of the finances of the applicant must include:

- (i) A description of the applicant's income, financial resources, debts, and expenses.

(ii) A statement concerning the evidence that was considered to verify the source and amount of income and financial resources.

(2) Any income designated for the support of one or more children in the applicant's care and custody, such as funds for foster care, or any income designated for the support of another member of the household, must not be counted towards the financial resources available for the support of a prospective adoptive child.

(3) USCIS will not routinely require a detailed financial statement or supporting financial documents. However, should the need arise, USCIS reserves the right to ask for such detailed documentation.

(i) *Checking available child abuse registries.* The home study preparer must ensure that a check of the applicant, and of each additional adult member of the household, has been made with available child abuse registries in any State or foreign country that the applicant, or any additional adult member of the household, has resided in since that person's 18th birthday. USCIS may also conduct its own check of any child abuse registries to which USCIS has access. . . .

(j) *Inquiring about history of abuse or violence as an offender.* The home study preparer must ask each applicant and each additional adult member of the household whether he or she has a history as an offender, whether in the United States or abroad, of substance abuse, sexual abuse, or child abuse, or family violence, even if such history did not result in an arrest or conviction. This evaluation must include:

(1) The dates of each arrest or conviction or history of substance abuse, sexual abuse or child abuse, and/or family violence; or,

(2) If not resulting in an arrest, the date or time period (if occurring over an extended period of time) of each occurrence and

(3) Details including any mitigating circumstances about each incident.

Each statement must be signed, under penalty of perjury, by the person to whom the incident relates.

(m) *Assessment with respect to physical, mental and emotional health or behavioral issues.* The home study must address the current physical, mental and emotional health of the applicant, or any additional adult member of the household, as well as any history of illness or of any mental, emotional, psychological, or behavioral instability if the home study preparer determines, in the exercise of reasonable

professional judgment, that the suitability of the applicant as an adoptive parent may be affected adversely by such history.

....

(r) *Specific approval for adoption.* If the home study preparer's findings are favorable, the home study must contain his or her specific approval of the applicant for adoption of a child . . . , and a discussion of the reasons for such approval. The home study must include the number of children the applicant may adopt at the same time. The home study must state whether there are any specific restrictions to the adoption based on the age or gender, or other characteristics of the child. If the home study preparer has approved the applicant for a handicapped or special needs adoption, this fact must be clearly stated.

(s) *Home study preparer's authority to conduct home studies.* The home study must include a statement in which the home study preparer certifies that he or she is authorized under 22 CFR part 96 to complete home studies The certification must specify the State or country under whose authority the home study preparer is licensed or authorized, cite the specific law or regulation authorizing the preparer to conduct home studies, and indicate the license number, if any, and the expiration date, if any, of this authorization or license. The certification must also specify the basis under 22 CFR part 96 (public domestic authority, accredited agency, temporarily accredited agency, approved person, exempted provider, or supervised provider) for his or her authorization to conduct Convention adoption home studies.

II. ANALYSIS

The issues in the Petitioner's case are whether the primary provider and home study requirements of the UAA have been met and whether the Beneficiary is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or because her sole or surviving parent is incapable of providing proper care. The Director asked for evidence that the Petitioner's case would be grandfathered under the UAA and if so, requested that deficiencies in the home study be addressed; and if not, that the Petitioner submit evidence of a primary adoption services provider and a home study that meets the requirements of 8 C.F.R. § 204.311. The Director asked that the Petitioner include, in the home study, an inquiry of any history of abuse and violence involving the prospective adoptive parent, an assessment of the prospective adoptive parent's capabilities, an assessment of finances, evidence of child abuse registry checks, a summary of counseling given and a plan for post-placement counseling, the home study preparer's authorization and license, and specific approval of the prospective adoptive parent for adoption. The Director also asked for evidence that the Beneficiary is an orphan, secondary evidence of the Beneficiary's identity, evidence that the Petitioner saw the Beneficiary prior to or during the adoption proceedings, and proof of adoption approval from the Acting Director of the Ghanaian Department of Social Welfare.

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The Petitioner responded by submitting a home study; the Beneficiary's birth certificate; an adoption order; an adoption authorization statement; a social enquiry report; a school letter; money transfer evidence; evidence of seeing the Beneficiary; identification records; information about Ghana; and statements from an attorney, the Petitioner, the Beneficiary's mother, and the Beneficiary's uncle. However, the I-600 denial reflects that the Petitioner did not provide evidence of the petition being grandfathered under the UAA, a home study meeting the requirements of 8 C.F.R. § 204.311, evidence of having engaged a primary provider, evidence that the Beneficiary is an orphan in the scenario where both parents are alive, and sufficient evidence that the Beneficiary's mother is incapable of providing for the Beneficiary's needs.

On appeal, the Petitioner asserts that she has a primary provider and a home study from an accredited agency. She also asserts the Beneficiary's father does not have legal rights over the Beneficiary; the Beneficiary's mother is incapable of providing care for her; and therefore she has established that the Beneficiary is an orphan. We find that the Petitioner has not overcome the grounds of denial, as she has provided insufficient evidence that the Beneficiary meets the definition of orphan under section 101(b)(1)(F)(i) of the Act.

A. Eligibility

1. Primary Provider

As the Petitioner does not claim, nor does the record reflect, that the petition should be grandfathered under the UAA, the first issue is whether the Petitioner has established that there is a "primary provider" responsible for ensuring all six specified "adoption services" are provided, as those terms are defined in 22 C.F.R. §§ 96.2 and 96.14. The Petitioner submits a valid certificate of accreditation for [REDACTED], which states that they are in substantial compliance with the provisions of Title 22 of the Code of Federal Regulations, Part 96, and they are approved to provide adoption services. The Petitioner also submits a primary provider statement from [REDACTED] stating that they have reviewed Ghana's adoption laws and verified that the adoption complies with Ghanaian law; and they have supervised the accredited agency, [REDACTED] that conducted the home study. Based on the record, we find that the Petitioner has established that she has a primary adoption service provider per 8 C.F.R. §§ 96.2 and 96.14.

2. Home Study

The second issue is whether the Petitioner's home study meets the requirements of 8 C.F.R. § 204.311. The Petitioner has submitted a home study, dated December 8, 2015, from [REDACTED]. The new home study addresses the deficiencies the Director described before denying the petition, including the following omissions: an inquiry of each applicant and adult member of the household of a history of abuse and violence, assessments of the prospective adoptive parents' capabilities and finances, child abuse registry checks, a summary of counseling given and a plan for post-placement counseling, a home study preparer's authorization and license, and specific approval of the prospective adoptive parents for adoption. The home study submitted

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on appeal includes the relevant requirements listed in 8 C.F.R. § 204.311. As such, we find that the home study meets the requirements of 8 C.F.R. § 204.311.

3. Orphan

The third issue is whether the Petitioner has established that the Beneficiary is an orphan under section 101(b)(F)(i) of the Act. The Director stated that the evidence submitted was insufficient to establish that the Beneficiary is an orphan, relying on a social enquiry report from an assistant director at the Department of Social Welfare, [REDACTED] which states, "the [Beneficiary's] parents are unable to look after the [Beneficiary] and her two siblings due to poor financial background." The Director concluded that this report indicates that the Beneficiary has two parents, and the Petitioner therefore must prove that the Beneficiary is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. However, on appeal, the Petitioner asserts that because the Beneficiary's father did not marry her mother, left before the Beneficiary's birth, and has never returned, the Beneficiary is a child whose mother is her sole parent.

The regulation at 8 C.F.R. § 204.3(b) provides:

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be *incapable of providing proper care* as that term is defined in this section.

The regulation at 8 C.F.R. § 204.3(b) also provides:

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the *foreign sending country*.

In support of the claim that the Beneficiary's mother is a sole parent with an illegitimate child whose father has severed all parental ties, rights, duties, and obligations to the Beneficiary, the Petitioner asserts that the Beneficiary's father's whereabouts are unknown, the Beneficiary's father never saw the Beneficiary and he left before she was born, nobody from the Beneficiary or her father's family has heard from the Beneficiary's father in over 15 years, and nobody knows whether he is alive. However, the social enquiry report, dated January 13, 2015, lists the same address for the Beneficiary's mother and father and refers to them both as struggling to look after their children. The social enquiry report also refers to the Beneficiary's parents gifting the Beneficiary to the Petitioners.

The Petitioner on appeal appears to question the validity or veracity of the registration document, to assert that the Beneficiary's father has severed all parental ties, rights, duties, and obligations to the Beneficiary. The Petitioner asserts that the birth registration process is very informal, nobody knows who entered the Beneficiary's father's name on the birth certificate, statements from the Beneficiary's family reflect that the Beneficiary's father left the village prior to the Beneficiary's birth and it would have been impossible for him to enter his name on her birth certificate, and numerous hypothetical scenarios may explain why his name is on the birth certificate.

The Petitioner cites to and provides a copy of Ghana's Children's Act of 1998, which states that evidence of parentage is the name of the parent entered in the registry of births, and each parent is responsible for the registration of birth of their child, and the names of both parents should appear on the birth certificate. Furthermore, the Petitioner asserts that the Beneficiary's mother identified the Beneficiary's father. Therefore, the Beneficiary's father's identity is known. The Petitioner provides no evidence showing that the birth certificate includes a mistake related to the Beneficiary's father's name or identity. The Petitioner has not established that the Beneficiary's mother is a sole parent due to the Beneficiary's father severing all parental ties, rights, duties, and obligations to the Beneficiary. In addition, the Petitioner does not assert that the Beneficiary's father has, in writing, irrevocably released the child for emigration and adoption.

Even if the Petitioner established that the Beneficiary's father severed all parental ties, rights, duties, and obligations to the Beneficiary, or has, in writing, irrevocably released the child for emigration and adoption, the Beneficiary's mother would still not meet the definition of a sole parent. An advisory opinion from the Law Library of Congress dated April 8, 2009, L.L. File No. 2009-02545, states that Ghana does not make any distinctions between children born within marriage and those born outside of marriage. In addition, an advisory opinion titled "Children Born out of Wedlock and Legitimation in Ghana," dated June 3, 1994 (LOC 94-1737), states that every child in Ghana is deemed to be legitimate and a father's name on a child's birth certificate reflects the father's acknowledgment and legitimation of the child. The regulation at 8 C.F.R. § 204.3(b) provides the definition of sole parent "is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate." In addition, section 41 of the Ghana Children's Act of 1998 provides that the name of the parent entered in the register of births is evidence of parentage; in the Beneficiary's case, the Beneficiary's father's name, listed on the birth certificate, constitutes evidence of parentage. The definition of a sole parent is not applicable to children born in countries, such as Ghana, that make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. Therefore, the Beneficiary's mother does not meet the definition of a sole parent.

We find that the Petitioner has not established that the Beneficiary is an orphan under section 101(b)(F)(i) of the Act as a child whose mother is her sole parent. As such, we will not address whether the Beneficiary's mother is unable to provide for the Beneficiary. Furthermore, the record does not include sufficient evidence that the Beneficiary meets the definition of an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom a surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.

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III. CONCLUSION

In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. The appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of T-M-A-*, ID# 16138 (AAO Apr. 25, 2016)